

ENTERED

May 20, 2016

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION****RUBEN PENA,****Plaintiff,****VS.****EDUARDO TORRES PACHECO, *et al.*,****Defendants.**§
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§**CIVIL ACTION NO. 5:15-CV-202****MEMORANDUM & ORDER**

This is a personal injury case resulting from a collision between a passenger vehicle operated by Plaintiff Ruben Pena and a commercial van owned by Defendant Yanet Conde and driven by Defendant Eduardo Torres Pacheco, who is said to have operated the vehicle in the course and scope of his employment with Defendant Y&E Transport Corp. (Dkt. 5.) Pending is the Magistrate Judge's Report and Recommendation concerning the dismissal of Defendant Y&E Transport and Defendant Pacheco for Plaintiff's failure to show timely service of process pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. (Dkt. 12.) Given the circumstances, the Magistrate Judge's recommendation of dismissal will be accepted.

The original complaint in this case was filed in September of 2015. (Dkt. 1.) By December, only Defendant Conde had submitted an answer, so the Magistrate Judge held a conference concerning the status of service of process on the other defendants. Plaintiff represented at such conference that service was still pending on Defendant Y&E Transport and that Defendant Pacheco could not be located and had likely left the country. The Magistrate Judge thus continued the matter. A second status conference was held in January of 2016. Plaintiff indicated that Defendant Y&E Transport had now been served, but that Defendant Pacheco still could not be located.

More than one month later, however, Plaintiff had yet to submit proof of service for either Defendant Y&E Transport or Defendant Pacheco. As such, the Magistrate Judge issued a notice warning Plaintiff that failure to show good cause for his failure to serve these defendants within the timeframe set by Rule 4(m) would lead to dismissal of the claims against them. (Dkt. 11.) Plaintiff was given a response date of March 1, 2016. (*Id.*) Having heard nothing from Plaintiff by this deadline, the Magistrate Judge issued his Rule 4(m) recommendation on March 16th. (Dkt. 12.) More than fourteen days have lapsed since the issuance of the report, and no objections thereto have been filed.

As such, the Magistrate Judge's report (Dkt. 12) is hereby ACCEPTED, such that Defendant Y&E Transport Corp and Defendant Eduardo Torres Pacheco are DISMISSED from this case without prejudice. The Clerk of Court is DIRECTED to make the corresponding notation on the electronic docket sheet. This case is now REFERRED back to the Magistrate Judge for further plenary pre-trial handling and ruling on non-dispositive motions.

IT IS SO ORDERED.

SIGNED this 20th day of May, 2016.

A handwritten signature in black ink, appearing to read 'D Saldaña', is written over a horizontal line.

Diana Saldaña
United States District Judge